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NO. 57810-3-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

LITTLE MOUNTAIN ESTATES
TENANT ASSOCIATION, et al.,

Appellants,

v.

LITTLE MOUNTAIN ESTATES MHC LLC, et al.,

Respondents.

# BRIEF OF RESPONDENTS

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## A. INTRODUCTION

This case involves owners of an upscale manufactured home park who were trying to get their business off the ground in a tough economy. They attracted tenants by offering an incredible deal: a 25-year rent-controlled lease that would rise or fall with the cost of living, in a beautiful manufactured home park with many amenities not typically seen in such facilities. Such terms are not profitable, and could not sustain the park indefinitely. Therefore, the 25-year lease contained an assignment clause: if the tenants chose to sell their homes, the buyer would receive a one-year lease, instead of the 25-year term. The tenants signed this lease without objection, and lived for many years according to its terms.

When a few tenants sold their manufactured homes, they were unable to market to buyers the 25-year term because of the assignment clause. Although many tenants are satisfied with their 25-year rent-controlled leases, some now want to discard the written lease and have the courts enforce an oral lease of the tenants' own invention. The "oral lease" these tenants propose contains only the most favorable terms to the tenants and none of the reasonable restrictions to which they originally agreed.

Nothing in contract law or the language and policy of the Mobile Home Landlord Tenant Act (MHLTA), RCW ch. 59.20, merits such a

result. The trial court properly recognized that the tenants should be bound by the reasonable, fair, and legal terms of the contract they freely signed.

B. COUNTERSTATEMENT OF ISSUES

1. Does the MHLTA prohibit modifications to a lease term upon assignment, when the new lease term complies with the MHLTA's one-year requirement?

2. When a contract is legal and no fraud or deception is involved, is a party who signs it after having ample opportunity to read and understand bound by its terms?

3. When a written lease is technically flawed, but the parties conduct their business according to its terms for many years, does the part performance doctrine make the lease enforceable?

4. Does substantial evidence support the trial court's conclusion that the tenants knew or should have known about the assignment clause, when tenants testified that the clause was in plain sight and attached to the lease and they simply did not read it?

5. Is the assignment clause procedurally unconscionable when the tenants could have reviewed and negotiated it prior to move-in but did not, and still had the opportunity to negotiate terms after move-in?

6. Is the assignment clause substantively unconscionable because it does not allow assignees to benefit from the same unprofitable rent-controlled 25-year lease as the original lessee?

7. Did the parties have an enforceable oral lease that supplants the subsequent written lease where there is absolutely no evidence of mutual assent to such an oral contract, and a 25-year oral lease would be illegal under the MHLTA?

8. Did Little Mountain comply with the Consumer Protection Act when it did not engage in any deceptive act or practice and any alleged harm to the tenants is not causally related to Little Mountain's actions?

C. COUNTERSTATEMENT OF THE CASE

Little Mountain Estates is an upscale manufactured home park. RP 1/13/06: 99. The manufactured homes installed there are pit set and landscaped so that home values increase, not decrease as in many traditional mobile home parks. RP 1/10/06 74-77; RP 1/13/06: 103. The park has a clubhouse, swimming pool, recreational facilities, and a gated entrance. Ex. 90. According to the tenants' own expert, Little Mountain Estates is a park of superior quality to other local parks. RP 1/13/06: 99.

(1) Little Mountain's Loss Leader 25-Year Leases

When Little Mountain was first being developed in 1990-91, it struggled for tenants because of unstable economic and political factors, including high interest rates and uncertainty caused by war with Iraq over the invasion of Kuwait. RP 1/12/06 at 57-58. To counteract this problem, at the suggestion of manufactured home dealer Lamplighter Homes, Little Mountain offered a 25-year rent-controlled lease in an attempt to attract new business. RP 1/12/06: 28, 33.

The 25-year lease was to be a "loss leader" (RP 1/10/06: 61), which means "an item priced not for profit, but to attract customers." Investor Glossary, http://www.investorglossary.com/loss-leader.htm. An effective loss leader stimulates sales of other goods. *Id.* The 25-year leases were rent controlled; rent increases were tied to the Consumer Price Index. CP 3660-62. Rent under the 25-year leases was below cost, and did not even meet the basic operating expenses of the park. CP 1769. From its inception in 1992, the unprofitable 25-year rent controlled lease was assignable as required by the MHLTA. RP 1/12/06: 28; RP 1/10/06: 60; RP 1/17/06: 15. But Little Mountain could not afford to offer this lease in perpetuity, so they drafted it to convert to a one-year term upon assignment. RP 1/12/06: 28; RP 1/10/06: 60; RP 1/17/06: 15. In this way, Little Mountain could eventually see some return on its initial investment in the park. RP 1/10/06: 72.

Tenants were not required to buy Lamplighter homes to get the 25-year lease; they were free to buy, and did buy, any home they chose. RP 1/9/06: 76, 107, 152; RP 1/10/06: 33. Little Mountain's relationship with Lamplighter Homes was merely a co-marketing agreement to save on advertising costs; neither Lamplighter, nor its employees, were agents for Little Mountain. RP 1/12/06: 25, 85-87. (In fact, Little Mountain became impatient with Lamplighter's employee Leeta Rice, who was moving tenants into model Lamplighter homes in the park without leases, and without informing Little Mountain. RP 1/12/06: 86-87.)

The tenants state in their brief that they first had to make a deposit, move their homes into the park, and landscape their lot to "qualify" for a 25-year lease. Br. of Appellants at 15. In fact, the tenants only testified that they did not sign leases until after move-in, not that they could not sign. *See, e.g.*, RP 1/9/06: 46; RP 1/10/06: 34-35. Although it is true that most tenants actually signed leases after they moved their homes into the park, there is no evidence in the record to suggest that deposit, move-in, or landscaping were preconditions of seeing, reviewing, or signing a 25-year or any other length lease. Deposits were merely to reserve a particular lot the tenant preferred, they were not required to qualify for any lease. RP

1/9/06: 35.[1] The "amenities package" standards for placing and landscaping homes, were for the purpose of keeping the park beautiful and well-maintained. RP 1/10/06: 74-77. They increased the value of the homes in the park and were mandatory for all tenants, not just those who received 25-year leases. RP 1/10/06: 74-77; Exs. 6, 160.

(2) The Tenants Had Ample Opportunity to Review Lease, and Had Power to Negotiate Terms, Before and After Move-In

The 25-year lease contained ¶ 6, which read: "ASSIGNMENT; SUBLETTING: This lease is assignable, providing that such assignment conforms with the limitations and language in Attachment 'B'. Subletting the manufactured home, the lot space, or any part thereof is not permitted." CP 3660-3803.[2] Attachment B contained clear notification of the conversion of the 25-year lease to a one-year term upon assignment. *Id.* Almost all of the leases produced at trial actually had the page containing Attachment B attached to the lease. CP 586-704, 1093-1165,

[1] In fact, the tenants benefited from the deposit system; it allowed them to reserve their preferred lots for extended periods of time for a flat fee, while they chose, purchased and installed their homes. The average tenant visited the park 6-12 times before deciding to buy a home. RP 1/12/06: 40-43. Even after they chose to buy, it would sometimes take many months to select, install, and landscape the home before the tenants took up residence. *See, e.g.,* RP 1/9/06: 33-35, 100. Had Little Mountain required prospective tenants to sign full lease to reserve a lot, those tenants would have been paying rent during that time.

[2] The tenants claim that three early leases make no mention of Attachment B. Br. of Appellants at 31. What they neglect to mention is that those leases are not 25-year leases, but one-year leases. CP 3690, 3753, 3790. It appears logical that a one-year lease would not need a clause converting the term to one year upon assignment.

3660-3803. Advertisements mentioning the 25-year lease never claimed that the balance of the 25 years was transferable upon assignment, and referred potential tenants to the lease for details. RP 1/9/06: 55; Exs. 9, 16, 17, 57. Every tenant who received the 25-year lease was subject to the assignment clause restriction, including owners Kevin and Kari Ware, and their parents. RP 1/12/2006: 48-49.

The tenants had ample opportunity to review the written lease before committing to buy and install a home. Far from concealing this marketing tool from potential tenants, Little Mountain prominently displayed copies of the lease in the park's clubhouse, and included it in advertising materials. Br. of Appellants at 15; RP 1/12/06: 33-34, 39-40, 62. Co-owner Kevin Ware said of the 25-year leases, "We would have put them as wallpaper in the bathroom if we could have." RP 1/12/06: 33.

Despite ready availability of the written lease and reference to it in advertising materials, most tenants did not inquire about the lease until after move-in, did not read the three-page lease closely before signing, and did not object to Attachment B when presented with it. RP 1/9/06: 54, 59, 86, 88, 90, 117, 119, 121, 137, 140-41; RP 1/11/06: 35. Most of the tenants who testified said that Attachment B was part of the lease they agreed to, or that they did not pay attention. RP 1/9/06: 62, 88-90, 125, 137, 149, 174; RP 1/10/06: 133; RP 1/11/06: 25, 63; RP 1/12/06: 16.

Many tenants testified that they did not discuss with Little Mountain whether the 25-year lease was assignable for the balance of the term, They simply assumed it or did not read Attachment B. RP 1/13/06: 64-65; RP 1/9/06: 62, 71, 121; RP 1/11/06: 73-74. The tenants concede that they should have read the leases more closely. Br. of Appellants at 22.

Despite their assertion that they had no choice but to sign, the tenants were not without bargaining power over Little Mountain. Some tenants successfully negotiated provisions of the lease after move in. For example, Donald Dykstra had to build a longer driveway than other residents, and demanded reimbursement from Little Mountain for the increased cost. Although Dykstra had assumed responsibility for installing his own driveway under the lease, Little Mountain reimbursed him $1000. RP 1/10/06: 12. After Wes Walton had moved his home onto a lot, he went to the manager to sign his lease. The manager told him that there were no 25-year leases available, only one-year leases. Walton insisted that he should receive a 25-year lease; Little Mountain agreed and gave him one. RP 1/13/06: 17-20.

(3) The Present Lawsuit -- Litigation Used as Leverage to Force a Sale of the Park to Tenants

When some tenants wanted to sell their homes, they became upset when discovered the assignment clause for the first time. The tenants

claimed that the assignment clause decreased the potential resale value of their homes. CP 31. They also objected to other terms in the lease.[3] Some tenants brought a slew of claims against Little Mountain (CP 21-65), most of which were dismissed on partial summary judgment. CP 379-80, 1180-83, 1539-42, 2049-50, 2220-24, 2225-27, 2228-29. Many tenants were happy with their leases and with the park, and refused to participate in the suit. CP 1973-99.

There was ample evidence at trial that some of the tenants were interested in purchasing the park from Little Mountain, but could not collectively afford the $6.5 million dollar sale price, which was below market value as compared to other, less attractive, local parks. CP 577, 1674, 1692, 1797. The tenant association leadership held this lawsuit over the heads of the Wares in an attempt to force the sale at more favorable terms. CP 577, 1674, 1692, 1797.

Judge Kenneth Cowsert held a bench trial and concluded that the lease was valid and enforceable, and that Little Mountain did not violate the Consumer Protection Act. CP 3100-10. Judge Cowsert also awarded

[3] In their brief the tenants hint at another issue raised below regarding the calculation of rent adjustments according to the Consumer Price Index. Br. of Appellants at 17, 27, 30. However, they never provide the Court with any argument or authority regarding the propriety of rent adjustments under Attachment A. Because the issue is not properly argued and supported by authority, this Court should not address it. RAP 10.3(a)(5).

Little Mountain costs and reasonable attorney fees based on the lease terms and statutory provisions.

## D. SUMMARY OF ARGUMENT

Each tenant received a 25-year lease. Each tenant received a rent-controlled lease. Each tenant who wanted to assign his or her lease to a buyer, could. The only thing the tenants did not receive is the ability to pass on their remarkable 25-year lease terms to assignees. But Little Mountain never advertised, agreed, or intended that the 25-year terms would be assignable for the balance of the original term.

The assignment clause did not violate the MHLTA. The Act does not require landlords to pass on an advertised, special sale lease term to assignees. Nor does it prohibit tenants from agreeing to limitations on assignability, as long as assignability is not waived. Although Little Mountain failed to secure signatures on the individual leases before move-in, this does not void the leases. Nor would the tenants desire that result, because the MHLTA's default term for an oral lease is one year.

The trial court heard substantial evidence to support its conclusion that each tenant had the opportunity to review and understand the lease terms before and after moving a home into the park. Each tenant signed a valid, enforceable lease with excellent terms.

Even if the written leases were not valid, the tenants' attempt to replace them with a 25-year oral lease is without merit. There is no evidence of mutual assent to such a lease, and it would be invalid under the MHLTA.

Little Mountain did not violate the Consumer Protection Act. There was no illegal, deceptive or misleading practice, and any alleged harm the tenants suffered was not causally connected to Little Mountain's acts.

Little Mountain is entitled to its reasonable costs and attorney fees on appeal.

E. ARGUMENT

(1) Standard of Review

Review of a trial court's findings of fact and conclusions of law is a two-step process. First, this Court must determine if the trial court's findings of fact were supported by substantial evidence in the record. If so, then the Court must decide whether those findings of fact support the trial court's conclusions of law. *Landmark Development, Inc. v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999).

The tenants list 14 findings of fact which they purportedly challenge. Br. of Appellants at 5-6. However, they fail to identify any issues relating to those findings of fact, nor do they specify in their

argument section which findings of fact they are addressing. Where such challenges can be gleaned from the context, Little Mountain has listed the substantial evidence that supports them. However, the tenants' challenges to findings of fact that are insufficiently briefed and unsupported by citation to the record should not be reviewed and are considered verities on appeal. *In re Disciplinary Proceeding Against Whitney*, 155 Wn.2d 451, 466-67, 120 P.3d 550 (2005).

To the extent that the tenants may be deemed to properly challenge findings of fact, they must meet a high standard of proof to succeed:

> [C]hallenge [to sufficiency of the evidence] admits the truth of the opponent's evidence and all inferences which can reasonably be drawn therefrom, and requires that the evidence be interpreted most strongly against the moving party and in a light most favorable to the opponent. No element of discretion is involved.

*Bell v. Hegewald*, 95 Wn.2d 686, 689, 628 P.2d 1305 (1981).

(2) The Written Lease Complies with the MHLTA

1. The 25-Year Term and Assignment Clause Comply With RCW Ch. 59.20. The tenants first argue that the written lease is unenforceable because under the MHLTA: (1) leases may contain no provision that requires a tenant to waive rights under the chapter, and (2) all leases are assignable. Br. of Appellants at 21-22. The tenants do not, and cannot, claim that Little Mountain prohibited assignment of their

leases outright, or that the one-year term of an assignee's lease is prohibited by the MHLTA. The tenants' argument regarding the legality of the assignment clause rests solely on one assumption: that the MHTLA prohibits parties from agreeing that the term of a lease will change upon assignment. The tenants provide no authority to support this contention.

The MHLTA requires leases to be assignable, allows the landlord and tenant to agree on the length of the lease (month-to-month is allowed by written waiver of the tenant), and provides that if there is no written agreement, the default lease term is one year. RCW 59.20.050, .073.

However, no provision in the MHLTA, nor any decisional law, requires a lease assignment to be for the same term as the original lease. The MHLTA contains no prohibition on agreements to convert a lease term upon assignment. The Legislature has crafted very specific provisions regarding what a mobile home lot lease can and cannot include. RCW 59.20.060. Yet has not prohibited assignment clauses such as the one at issue here. As long as the length of the new term is, as here, at least one year, the assignment clause does not violate the MHLTA.

The tenants cite *Puget Sound National Bank v. State Dep't of Revenue*, 123 Wn.2d 284, 868 P.2d 127 (1994) in support of their assignment argument. Br. of Appellants at 29-30. In Puget, car dealers assigned to a bank their retail installment contracts with customers. *Id.* at

285-86. When some customers defaulted and the bank repossessed the cars at a loss, the bank claimed the sales tax refunds that would have been owed to the dealers. *Id.* The Department of Revenue argued that because the statute authorizing the sales tax refund, RCW 82.08.037, expressly provided the refund to the "seller," no refund was owed because the bank was not the seller. *Id.* at 288-89. But our Supreme Court concluded that as assignee, the Bank assumed all of the right of the sellers, including the right to the sales tax refund. *Id.* at 291.

There is a crucial fact that distinguishes Puget from the case at bar: there is no indication in Puget that the assignment restricted the bank's ability to recover tax refunds in any way. The Court simply interpreted the unrestricted assignment clause as written, giving all of the seller's rights to the bank. *Id.* An assignment clause is a contract provision, and "[p]arties may incorporate in their contracts any provisions which are not illegal or violative of public policy." *In re Marriage of Kinne*, 82 Wn.2d 360, 363, 510 P.2d 814 (1973).

Here, the parties agreed to a reasonable restriction on assignment: conversion of the 25-year term to one year. The trial court simply interpreted the lease as written.

The assignment clause is not violative of public policy. A 25-year rent-controlled lease far exceeds the requirements of the MHLTA, and in

fact fulfills the policy behind it: to give seniors and low-income citizens stable, affordable housing. *Washington Real Property Deskbook* § 15.3 (3d ed. 1997). As the tenants concede, such a lease is of great benefit to the tenant. Br. of Appellants at 30. It is not unconscionable nor against public policy to provide rent below cost, but offer that benefit only to the original lessee and not to future assignees.

2. The Tenants Had Ample Opportunity to Review the Lease Prior to Signing It and Cannot Complain That They Did Not Read It. The tenants argue that Little Mountain's violation of RCW 59.20.050(1) excuses their own failure to read the contracts they were signing. Br. of Appellants at 22.

Generally, "a party to a contract which he has voluntarily signed will not be heard to declare that he did not read it, or was ignorant of its contents." *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 799, 64 P.3d 22 (2003). Exceptions can be made when the complaining party was deprived of the opportunity to read the contract or was the victim of fraud, deceit, or coercion. *Id.*

The trial court concluded on substantial evidence that each of the tenants here had a chance to review the lease before move-in and before signing. Ample testimony supported Little Mountain's assertion that, far from trying to hide the 25-years leases from prospective tenants, Little

Mountain promoted them and offered them up freely. RP 1/12/06: 33-34, 39-40, 62. The trial court also had substantial evidence from which to conclude that Little Mountain did not engage in any fraud, deception, or coercion regarding the leases, but instead made them available at all times and did not misrepresent their nature. RP 1/12/06: 33-34, 39-40, 62; RP 1/9/06: 55; Exs. 9, 16, 17, 57.

The tenants assert that the lease was not a "mirror image" of the advertising materials, suggesting that any deviation from advertisements was a "modification" of the original agreement. Br. of Appellants at 28-30. This position belies a fundamental misunderstanding of contract law, as well as the basic facts of this case.

First, it is well-established that an advertisement is not an offer. *See* 25 *Wash. Prac.* § 2.12, p. 36 ("Prices quoted in an advertising circular or other advertisement ordinarily are not offers."); 1 Williston, *A Treatise on the Law of Contracts* § 4:7 (1990) (same); *Restatement (Second) of Contracts* § 26, comment b (1981) ("Advertisements of goods by display, sign, handbill, newspaper, radio or television are not ordinarily intended or understood as offers to sell."). The tenants could not orally "accept" the advertised terms contained in brochures and handouts, because they were not an offer, but an invitation to make an offer.

Second, the mirror image rule applies to offer and acceptance, not advertisement and subsequent offer. 7 *Wash. Prac. UCC Forms Art. 2 Intro.* In this case, the mirror image rule actually supports Little Mountain's position: the offer the Little Mountain extended, in the form of the written lease, was accepted in its mirror image when the tenants signed the lease agreement, thus forming a contract. *See Seaborn Pile Driving Co., Inc. v. Glew*, 132 Wn. App. 261, 268-69, 131 P.3d 910 (2006) (party's mirror image acceptance of offer formed valid, enforceable contract). The tenants cannot now claim that the contract is void because they accepted Little Mountain's offer without reading it closely. *Michak*, 148 Wn.2d at 799.

Third, and perhaps most importantly, the written lease delivered on the advertised terms. The tenants expected a 25-year lease tied to the CPI, and that is precisely what they received. There is no evidence whatsoever Little Mountain's advertisements claimed that the balance of the 25 years was assignable.

The substantive provisions of the leases complied with the MHLTA. Although Little Mountain failed to secure signatures on the leases prior to move-in, this technical violation does not void the leases. The tenants cannot claim they were deceived when they freely signed leases that included the advertised terms, nor can they contend that they

are excused for their failure to read and understand them. The trial court correctly concluded that the written lease was enforceable.

3. The Written Lease is Valid Despite Its Technical Infirmities. The tenants suggest that the technical imperfection of the written lease (failure to deliver before move-in) voids the written lease and leaves this Court only to consider whether an oral lease existed under the part performance exception to the statute of frauds. Br. of Appellants at 24. The tenants ignore that part performance applies to imperfect written leases, not just oral leases.

When a contract encumbering real property clearly exists, but is oral or is written but defectively executed, courts will nonetheless enforce it using the doctrine of part performance. *Berg v. Ting*, 125 Wn.2d 544, 886 P.2d 564 (1995). The part performance doctrine applies, and a proven agreement will be enforced, if there is: (1) delivery and assumption of possession; (2) consideration; and (3) permanent, substantial, and valuable improvements. *Id.* at 556. Part performance operates as an equitable bar against those who might try to assert invalidity of an instrument to which they agreed. *Tiegs v. Watts*, 135 Wn.2d 1, 16, 954 P.2d 877 (1998); *Miller*, 78 Wn.2d at 828-29.

In *Tiegs*, farmers leased land on which to grow potatoes, but later discovered that their irrigation water was contaminated. *Tiegs*, 135 Wn.2d

at 8. The farmers sued for damages, but the landlord contended that the leases were unenforceable because they were unacknowledged and therefore invalid under the statute of frauds. *Id.* at 16. Our Supreme Court observed that "[a]n unacknowledged lease, which is to some extent a parol contract concerning real estate, must be proven by clear and convincing evidence. . . . Leases have been sustained where the lessee had performed acts called for . . . giving rise to estoppel or part performance." *Id.* Testimonial evidence proved that the landlord recognized the lease and his signature, and our Supreme Court said that the leases were valid and enforceable because the lessee had taken possession and paid rent, and the parties had otherwise "conducted their business according to the terms of the lease." *Id.* at 16-17.

Here, the tenants' attempt to deny the written contract puts Little Mountain, as landlord, in the unusual position of arguing that part performance applies. However, the same analysis that applies to lessees who want to enforce a lease should apply when they want to invalidate it. There is no dispute in this record that both parties agreed to, signed, and conducted their business for many years according to the terms of the written leases. Despite technical violation of the MHLTA, under the reasoning in *Tiegs* the written leases should be enforceable.

The tenants argue that Little Mountain's failure to obtain a signed lease before move-in means the tenants are entitled to a 25-year oral lease under the MHLTA. Br. of Appellants at 21-25.

The MHLTA provides that if a landlord fails to secure a signed lease agreement prior to move-in, "the term of the tenancy shall be deemed to be for one year from the date of occupancy of the mobile home lot." RCW 59.20.050(1). No statute or case provides that failure to get a signed lease in advance voids any subsequent written agreement.

Presumably because the tenants see the value of a 25-year term, they wish to ignore the clear mandate of a one-year term under RCW 59.20.050, void the written agreement, and supplant it with an oral agreement containing only those terms the tenants prefer. There is no support for such a result in the statute or in case law. In fact, an unwritten 25-year lease would itself violate RCW 59.20.050(1), which provides that landlords may not rent mobile home lots for one year or more without a written agreement.

To require landlords to pass on unprofitable, rent-controlled, extended lease terms to assignees, despite the parties' agreement to the contrary, would be a disincentive for landlords to offer such generous terms. That would contravene the purpose of the MHLTA, which is to

provide affordable, stable living for low-income and elderly citizens. *Washington Real Property Deskbook* § 15.3 (3d ed. 1997).

The MHLTA does not speak to the situation here, where a landlord makes the lease available but neglects to obtain a signature before move-in, and the parties subsequently agree to fair written terms that in all other respects comply with the MHLTA and other laws. The trial court determined that Little Mountain did violate this provision, but that this technical violation did not make the parties' written subsequent voluntary written agreement unenforceable. CP 3285. This Court should also conclude that in such a situation, the voluntary subsequent written lease is enforceable, subject to ordinary principles of contract law and public policy.

4. Substantial Evidence Supports the Trial Court's Conclusion that the Tenants Knew or Should Have Known About the Assignment Clause. The tenants argue that substantial evidence does not support the trial court's conclusion that they knew or should have known about Attachment B. Br. of Appellants at 30-31.

Most of the tenants who testified said that Attachment B was part of the lease when they agreed to it, or that they did not pay attention. RP 1/9/06: 62 (Harman); RP 1/9/06: 88-90 (Keillor); RP 1/9/06: 125 (Peterson); RP 1/9/06: 137 (Landvatter); RP 1/9/06: 149 (Svensson); RP

1/9/06: 174 (Dykstra); RP 1/10/06: 133 (Kristiansen); RP 1/11/06: 25 (Olson); RP 1/11/06: 63 (Helland); RP 1/12/06: 16 (Custer). This testimony is substantial evidence that the tenants knew or should have known about Attachment B.

In their brief, the tenants single out the testimony of two witnesses as evidence that Attachment B was not with the lease. Br. of Appellants at 31. But Jerry Jewett claimed only that he could not recall if Attachment B was with the lease when he signed it. RP 1/10/06: 160. Virginia Haldeman claimed that Attachment B was not there, but when the original lease was produced from her tenant file with the attachment included, Haldeman claimed that she "never saw the attachment" and had "no recall of that." RP 1/13/06: 131, 135.

The evidence shows that the tenants knew or should have known about the assignment clause. Substantial evidence supports the trial court's conclusion that the tenants agreed to the assignment clause as part of the lease.

5. The Assignment Clause Is Not Unconscionable. The tenants claim that the assignment clause is procedurally and substantively unconscionable. Br. of Appellants at 35-36. They argue that it is procedurally unconscionable because the tenants had no meaningful

choice or bargaining power after they moved their homes in, and that it is substantively unconscionable because it violates the MHLTA. *Id.*

Our Supreme Court thoroughly discussed unconscionability in two recent companion cases, *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 103 P.3d 773 (2004) and *Zuver v. Airtouch Commc'ns, Inc.*, 153 Wn.2d 293, 103 P.3d 753 (2004). Unconscionability is a principle that exempts parties from the default rule that those who sign contracts should be bound by the terms of their agreements. *Adler*, 153 Wn.2d at 344. Procedural unconscionability is a lack of meaningful choice at the time of signing a contract. *Id.* at 347. It is evaluated by three nonexclusive factors, which must be considered in light of all the circumstances: (1) whether the contract is a standard form printed contract, (2) whether it was prepared by one party and submitted to the other on a take it or leave it basis, and (3) whether there was no true equality of bargaining power between the parties." *Id.* "Substantive unconscionability" refers to a contract term that is shocking to the conscience, monstrously harsh, or exceedingly calloused. *Id.* at 344-45.

Here, the 25-year lease was a three page document, including the attachments, and the assignment clause was written in easy-to-read type larger than that of the lease itself. Appendix A. Little Mountain was actively encouraging new tenants by publicizing the lease, handing it out,

and leaving copies of it all around the facility. RP 1/12/06: 33-34, 39-40, 62. But the tenants waited until they had moved in to actually review the lease. Any inequality of bargaining power at that point was of the tenants' own making, they were not required to move in before reviewing and negotiating the terms of the lease.

Furthermore, some tenants successfully negotiated provisions of the lease after move in. For example, Donald Dykstra had to build a longer driveway than other residents, and demanded reimbursement from Little Mountain for the increased cost. Although Dykstra had assumed responsibility for installing his own driveway under the lease, Little Mountain reimbursed him $1000. RP 1/10/06: 12. After Wes Walton had moved his home onto a lot, he went to the manager to sign his lease. The manager told him that there were no 25-year leases available, only one-year leases. Walton insisted that he should receive a 25-year lease; Little Mountain agreed and gave him one. RP 1/13/06: 17-20.

Although the contract was preprinted and prepared by Little Mountain, the totality of circumstances suggests that the lease was not procedurally unconscionable. The tenants had the opportunity, before and after move-in, to reject or negotiate terms of the lease. The trial court correctly rejected the tenants claim that the leases were procedurally unconscionable.

The claim that the assignment clause is substantively unconscionable because it violates the MHLTA is without merit. First, as explained infra § B(1), the clause does not violate the statute. Second, there is nothing about the assignment clause that is monstrous, shocking, or harsh. The tenants all received a tremendous economic benefit with a 25-year rent-controlled lease. Although they might see some extra benefit from being able to market the loss leader to assignees should they choose to sell, there is nothing harsh or shocking about denying them that benefit in exchange for a stable, affordable place to live for the very long term.

(3) There Is No Enforceable Oral Lease

The tenants argue that under the part performance doctrine they had oral 25-year leases with the balance assignable. The tenants base this claim on Little Mountain's "offer" in advertising materials and the tenants' "acceptance" by making down payments, purchasing homes, moving the homes in, and landscaping. Aside from the problem that an advertisement is not an offer, as explained infra § B(2), the tenants' argument ignores several other elements of contract law.

The tenants claim that by the time they moved their homes onto the lots, they had a preexisting agreement with Little Mountain for a 25-year lease with the balance transferable. This argument fails because, regardless of any part performance by the tenants, substantial evidence

supports the trial court's finding that there was never mutual assent regarding this or any other contract term prior to the offer and acceptance of the written lease.

Every contract consists of mutual assent (offer and acceptance) and consideration; if mutual assent is absent, no contract exists. *Miller v. McCamish*, 78 Wn.2d 821, 826, 479 P.2d 919 (1971). Mutual assent is not based upon subjective intent, but must be founded upon objective manifestation of the intents of the parties. *Id.* Parties who mutually assent to convey an interest in real property must execute a writing using deed formalities in order to comply with the statute of frauds. *Id.*; RCW 64.04.010 and 64.04.020. The part performance doctrine, explained infra § B(3), can take an oral contract out of the statute of frauds. However, even if the elements of part performance are not disputed, the essential terms of the underlying contract must be proven, either by admission of the opposing party, or at least by a sufficient quantum of evidence as to obviate the need for a writing under the statue of frauds. *Miller*, 78 Wn.2d at 829. *See also, Kruse v. Hemp*, 121 Wn.2d 715, 725, 853 P.2d 1373 (1993).

The tenants presented no evidence that Little Mountain advertised, agreed, or intended that the balance of the 25-year lease term would pass to an assignee. Instead, they can only point to their own subjective

impressions regarding assignability. Br. of Appellants at 28-29. The tenants testified as to their unilateral understanding that the term was assignable, but did not present any evidence of agreement between the parties before the lease was signed. The tenants also presented no evidence, and point to none in the record, of mutual assent to any other term of the landlord-tenant relationship prior to the signing of the lease agreement. Br. of Appellants at 28-29. They simply claim that they did not believe "what they believed they had purchased . . . ." *Id.*

On the other hand, Little Mountain presented testimony and documentary evidence to prove the opposite proposition: that the 25-year lease was a loss leader and Little Mountain always intended to convert the leases to one-year terms upon assignment. RP 1/12/06: 28; RP 1/10/06: 60; RP 1/17/06: 15. Little Mountain also showed that the parties signed written contracts to that effect, and that the tenants did not object to the term at signing. RP 1/9/06: 59, 90, 140; RP 1/10/06: 134; RP 1/11/06: 35.

There was no mutual assent to any oral contract before the parties signed the written lease. The trial court properly concluded that there was insufficient evidence of an agreement between the parties regarding assignability of the balance of the lease term, or any other oral agreement. CP 3141. The tenants cannot meet their burden to challenge the sufficiency of the evidence on this point.

In addition to failing to prove mutual assent to such an agreement, the tenants ignore the basic tenet of contract law that prior oral negotiations or representations, also knows as parol evidence, cannot supplant the terms of an integrated written agreement. *Trethewey v. Bancroft-Whitney Co.*, 13 Wn. App. 353, 356, 534 P.2d 1382 (1975). The tenants cannot use prior oral statements to contradict the assignment clause which is included in the integrated writing.

The tenants did not present evidence as to the parties' mutual assent to the oral contract they are now claiming exists. Even if they had, any such oral testimony could not be used to modify the integrated writing to which the parties later agreed. The trial court properly concluded that there was no oral agreement which contradicted the written lease.

Moreover, even if this Court invalidated the written lease and supplanted it with an oral lease, the tenants' claims would then be barred by the statute of limitations.

The statute of limitations for actions brought upon an oral contract is three years from the date of accrual. RCW 4.16.080(3). A cause of action on accrues on the date that a party has the right to apply to a court for relief. *Hudson v. Condon*, 101 Wn. App. 866, 874, 6 P.3d 615 (2000). That right arises when the plaintiff establishes each element of the cause

of action. *Id.* Accrual of additional damages arising from the same claim does not restart the statute of limitations.

The tenants' original complaint in this action was filed on August 28, 2002. CP 1673. No tenant received a 25-year lease on or after August 28, 1999. CP 586-704, 1093-1165, 3660-3803. The tenants asked for declaratory judgment, in which the superior court can "declare rights, status, and other legal relations whether or not further relief is or could be claimed." RCW 7.24.010. The basis for that declaratory judgment action was the tenants' belief that the assignment clause was illegal or contrary to their alleged oral agreement. CP 48. Any subsequent claim for additional damages (such as monetary losses) does not toll the statute of limitations; the statute begins to run when the claim first accrued even if subsequent additional damages arise:

> Where an injury, although slight, is sustained in consequence of the wrongful act of another, and the law affords a remedy therefor, the statute of limitations attaches at once. It is not material that all the damages resulting from the act shall have been sustained at that time, and the running of the statute is not postponed by the fact that the actual or substantial damages do not occur until a later date.

*Steele v. Organon, Inc.*, 43 Wn. App. 230, 234, 716 P.2d 920 (1986) (quoting *Lindquist v. Mullen*, 45 Wn.2d 675, 677, 277 P.2d 724 (1954). Once the declaratory judgment claim accrued, the statute of limitations began to run.

Here, the declaratory judgment cause of action accrued when each of the tenants signed their lease. According to their arguments, the lease as written and signed was invalid. The tenants knew or should have known of the facts giving rise to their declaratory judgment action upon reading the lease. Assuming arguendo that the assignment clause was illegal or contrary to a prior oral agreement, when the lease was presented for signing the tenants then had the right to apply to a court for relief to have the contract declared invalid. If this Court concludes that some alternate oral contract existed, the three-year statute of limitations still bars every tenant's claim.

(4) The Lease Did Not Violate the Consumer Protection Act Because It Did Not Mislead the Public Nor Did It Violate the MHLTA

The tenants claim a Consumer Protection Act violation here, alleging that the written lease violates the MHLTA and that Little Mountain's business practices are deceptive with respect to the 25-year lease. Br. of Appellants at 38-39. The tenants claim that Little Mountain misrepresented something of material importance. *Id.*

The Consumer Protection Act, RCW ch. 19.86, prohibits "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce . . . ." RCW 19.86.020. There are five essential elements of a CPA claim: (1) an unfair or deceptive act or

practice; (2) that occurs in trade or commerce; (3) impacts the public interest; (4) which causes injury to the plaintiff in his or her business or property; and (5) the injury is causally linked to the unfair or deceptive act. *Holiday Resort Cmty. Ass'n v. Echo Lake Assocs., LLC*, 134 Wn. App. 210, 225-26, 135 P.3d 499 (2006). Failure of any element is fatal to the claim. Id. Under the CPA, violation of a statute can be a per se deceptive act, as can a misleading practice that misrepresents something of material importance. *Id.* at 220, 228.

*Holiday Resort*, cited by the tenants, bears no resemblance to this case. The lease at issue in *Holiday Resort* contained a clause that waived a tenant's right under RCW 59.20.090(1) to automatic renewal of a one-year lease term, and instead reverted the leasehold to a month-to-month tenancy unless the tenant specifically notified the landlord otherwise. This Court concluded that the lease improperly waived a tenant's statutory right to automatic renewal of the lease term in violation of RCW 59.20.090(1) and RCW 59.20.060(2).

Here, as explained infra § B(1), no provision of the lease violated any part of the MHLTA. Also, Little Mountain did not deceive any tenant; the tenants simply had a mistaken assumption that the 25-year lease was assignable for balance of the term. RP 1/9/06: 62, 71, 121; RP 1/10/06: 121, 128; RP 1/11/06: 73-74, 124-25; RP 1/13/06: 64-65. Their

mistake was not a result of any deception by Little Mountain, nor was any act or omission of Little Mountain causally connected to any damages alleged by the tenants. The trial court properly dismissed the tenant's CPA claim.

(5) Little Mountain is Entitled to Costs and Attorney Fees on Appeal

The appellate rules provide for attorney fees to the prevailing party on appeal if statute, contract, or equity provides it. RAP 18.1. The lease agreement in this case provides:

> ATTORNEY'S FEES AND COSTS: In the event an attorney shall be employed or an action be commenced to enforce the provisions of this Lease Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs and expenses in connection with any such proceedings.

CP 3296.

RCW 59.20.110 provides an independent statutory basis for an award of attorney fees and costs to Little Mountain: "In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney fees and costs."

This is an action to enforce the provision of the lease, and arising out of RCW 59.20.110. The trial court awarded costs and attorney fees to Little Mountain as the prevailing party. Little Mountain respectfully

requests that this Court award reasonable costs and attorney fees on appeal.

F. CONCLUSION

Little Mountain offered a generous and fair lease to prospective tenants, and made the offered lease readily available to prospective tenants. The modest assignment clause was neither illegal, unconscionable, nor concealed from view. Having had the opportunity to review the leases before and after move-in, the tenants cannot complaint about a reasonable provision to which they agreed by signing the contract.

Little Mountain complied with the MHLTA and the CPA. This court should affirm the trial court's decision, and award Little Mountain attorney fees and costs on appeal.

DATED this 13th day of August, 2007.

Respectfully submitted,

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Sidney Charlotte Tribe, WSBA #33160
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Attorneys for Respondents
Little Mountain Estates MHC LLC,
Peregrine Holdings, and the Wares

# APPENDIX

Little Mountain ESTATES

# 25 YEAR LEASE AGREEMENT

This Lease Agreement is executed at Skagit County, WA on May 23, 1993, between Little Mountain Estates (hereinafter "Landlord") and Dyce E. Bailey (hereinafter "Tenant"), who agree as follows:

1. **DESCRIPTION OF PREMISES:** Landlord hereby leases to Tenant that certain space in the County of Skagit, State of Washington described as space number 93, Little Mountain Estates, Skagit County, Washington.

2. **TERM:** The term of this tenancy shall be twenty-five years commencing on May 23, 1993, and continuing through May 22, ~~19~~ 2118.

3. **RENT:** Tenant shall pay to Landlord 285.00 per month as rent; through May 22, ~~19~~ 1994 and thereafter shall be subject to an annual adjustment formula per Attachment A; said rent shall be due and payable in advance on the first day of each calendar month, and Tenant shall pay the rent to Landlord, without deduction or offset, at the office of the Landlord's resident manager, or at such other places as Landlord may designate from time to time.

ALL PRORATED RENTS SHALL BE COMPUTED ON THE BASIS OF A THIRTY (30) DAY MONTH

If the rent is not paid by the **FIFTH** day of any calendar month, Tenant shall be required to pay to Landlord a service charge of $25.00 plus $2.00 per day, computed from the second day of the month to the day of payment, both inclusive. In addition to the foregoing, if any check tendered by Tenant for payment of rent is returned by the bank for any reason, Should the landlord be required to issue a formal notice under RCW 59.20, the tenant shall be charged $25.00.

4. **CHARGES FOR UTILITIES:** Basic cable television service and maintenance of the Clubhouse & Common Areas are included in the rent. Other services shall be the sole responsibility of the Tenant. (Note: Utilities and services not included in the rent and not billed by the Landlord will be billed to Tenant directly by the utility or service company involved.) Separate charges for R.V./camper storage (if any) will be billed to Tenant monthly by the Landlord.

5. **USE OF PREMISES:** The premises shall be used for residential purposes only; and the premises shall be occupied only by two individuals one of which must be at least 55 years of age whose name(s) are listed below:

Dyce E. Bailey

Occupancy by other or additional persons is permitted only with the prior written consent of Landlord, who may grant or withhold such consent at Landlord's sole discretion.

6. **ASSIGNMENT; SUBLETTING:** This lease is assignable, providing that such assignment conforms with the limitations and language in Attachment "B". Subletting the manufactured home, the lot space, or any part thereof is not permitted.

7. **PETS:** No pets or animals of any kind shall be kept in or about the manufactured home park without the tenant first having signed the Pet Policy Rider.

8. **WASTE; QUIET CONDUCT:** Tenant shall not violate any County ordinance or State law in or about the premises, shall not commit or permit waste or nuisance in or about said premises, and shall not in any way annoy, molest, or interfere with other occupants of said premises or neighbors and shall not use in a wasteful, unreasonable, or hazardous manner any of the facilities, utilities, or services furnished by Landlord.

9. **LANDLORD'S RIGHT OF ENTRY:** Tenant shall permit Landlord and Landlord's servants, agents, and employees to enter into and upon the space rented to Tenant at all reasonable times for any reasonable purpose, including but not limited to the purpose of inspecting the premises, maintenance of utilities, protection of the manufactured home park and the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to Tenant for loss of quiet enjoyment.

10. **LIABILITY:** Tenant agrees that all of his personal property in the Park shall be at the risk of tenant. Tenant further agrees that Landlord shall not be liable for or on account of any loss or damage sustained by action of any third party, fire, theft, water, or the elements, or for loss of any property from any cause from said Manufactured Home Lot or any other part of the Park; nor shall Landlord be liable for any injury to Tenant, his family, guests, employees or any person entering the Park or the property of which the Park is a part, unless by negligence of Landlord, his agents, or representatives, in the operation or maintenance of the Park.

11. **ATTORNEY'S FEES AND COSTS:** In the event an attorney shall be employed or an action be commenced to enforce the provisions of this Lease Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and all costs and expenses in connection with any such proceedings.

12. **ACCEPTANCE AND SURRENDER OF PREMISES:** Tenant accepts the premises and all physical improvements in the common areas as is, and as being in good and sanitary condition and repair, and agrees at the termination of this Lease Agreement to peaceably surrender the premises to Landlord in a clean and satisfactory condition. Tenant has inspected the premises and the common areas (and all physical improvements therein) and accepts the same "as is", and acknowledges that the same are in good condition and repair, unless noted to the contrary in this Lease Agreement.

13. **RULES AND REGULATIONS:** Tenant acknowledges having read and received a copy of the Landlord-Tenant Act, Chapter 59.20 RCW and a copy of the current rules and regulations governing Tenant's conduct in the manufactured home park and on the space rented hereby; Tenant agrees to abide by and conform with each and all of the said rules and regulations, and all future rules, regulations, and notices duly adopted by Landlord hereafter. Tenant also agrees that any failure to comply with the rules and regulations by Tenant, Tenant's family, or Tenant's guests shall be a material breach of the terms of this tenancy, and Landlord may terminate Tenant's tenancy for such breach.

Note: Insofar as any provision of this Lease Agreement or the rules and regulations of the manufactured home park conflicts with any provision of RCW 59 applicable to manufactured home residency, the RCW 59 shall control.

14. **HOLDING OVER:** If Tenant, with Landlord's consent, remains in possession of the premises after expiration or termination of the term hereof, or after the date in any notice given by Landlord to Tenant terminating the tenancy, such possession by Tenant shall be deemed to be a month-to-month tenancy and shall be terminable as such by either party. All provisions of this Lease Agreement except those pertaining to term shall apply to such month-to-month tenancy.



CP-1093

15. **WAIVER:** Any waiver by Landlord of, or Landlord's failure to take action in connection with, any provision of this Lease Agreement or the rules and regulations of the manufactured home park shall not be deemed a waiver of any such provision or any subsequent breach of any such provision, and the acceptance of rent thereafter shall not be deemed a waiver of any preceding breach by Tenant of any provisions of this Lease Agreement or said rules and regulations regardless of Landlord's knowledge of such preceding breach at the time of accepting such rent. In the event any provision of this Lease Agreement or the rules and regulations shall be determined to be invalid or unenforceable, the remainder of the Lease Agreement and the rules and regulations shall continue in full force and effect.

16. **FORFEITURE:** Upon default by Tenant with respect to any provision hereof, or abandonment of the premises by Tenant, Landlord may, in addition to any other rights or remedies Landlord may have, re-enter the premises through process of law and, at Landlord's option, declare a forfeiture and terminate this Lease Agreement. Upon termination of the tenancy, Landlord shall have a lien on all personal property of Tenant situated in and about the premises to secure payment of all rent, utilities and service charges, and damages owed by Tenant.

17. **JOINT AND SEVERAL LIABILITY:** Each person executing this Lease Agreement as "Tenant" is jointly and severally liable herein and is required to perform in full all obligations imposed on Tenant in this Lease Agreement.

18. **REMOVAL SALE:** If Tenant shall sell the manufactured home located upon the premises to a third party during the term hereof, and the manufactured home is to remain located in the manufactured home park after the sale, Tenant must first obtain Landlord's approval of the purchaser prior to completion of the sale; to enable Landlord properly to give or withhold such approval. Tenant shall give sixty (60) days' written notice to Landlord of the contemplated sale prior to the close of sale and shall otherwise cooperate in obtaining and providing to Landlord such information and documentation from the purchaser as is reasonably required by Landlord. Landlord reserves the right to require that the purchaser as a prospective tenant comply with any rule or regulation of the manufactured home park limiting residence within the park to adults only.

19. **RESPONSIBILITY OF LANDLORD:** It is the responsibility of the Landlord to provide and maintain physical improvements of the common facilities of the manufactured home park in good working order and condition. The following described physical improvements will be provided to Tenant: recreation building, green belt and common areas. Landlord reserves the right to construct or add to physical improvements at his sole discretion.

20. **NOTICE OF CHANGES:** Landlord shall, after having provided all tenants with at least ten (10) days prior written notice of the matters to be discussed, meet and consult with the tenants, either individually or collectively, on the following matters regarding general park operations:

a. Amendments to the park rules and regulations.
b. The standards for maintenance of physical improvements in the park.
c. The addition, alteration, or deletion of services, equipment, or physical improvements.

21. **NOTICES:** Any notice required by law or by the provisions of this Lease Agreement to be given by either party to the other may be served personally, or by any other form of service authorized by statute, or may be mailed by certified or registered mail, postage prepaid, addressed as follows:

To Tenant: Joyce E Bailey
2611-E Section #93 MT Vernon, WA. 98273

To Landlord: Little Mountain Estates
2610 E. Section Street
Mount Vernon, Washington 98273

or such other address as Landlord may designate by written notice to Tenant.

22. **TERMINATION OF TENANCY:** Grounds for the termination of the lease agreement shall be in accordance with the MOBILE HOME LANDLORD-TENANT ACT of the State of Washington Chapter 59.20.080.

23. **EMINENT DOMAIN:** In the event of taking of all or a portion of the park for any public use by right of eminent domain or by private sale in lieu thereof, so that the space rented to Tenant is not reasonably suited for the purposes for which rented or so that the park is not, in Landlord's opinion, suited for continued operation as a manufactured home park, this Lease Agreement shall terminate on the date that the possession of the park or portion thereof is taken. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord and renounces any interest in or right to all or any portion or any award made or compensation paid to Landlord for the taking; provided, however, that Landlord shall have no interest in any award made to Tenant for the taking of personal property and fixtures belonging to Tenant, which Tenant would otherwise have been entitled to remove at the conclusion of the tenancy.

24. **SUPPLEMENTAL DOCUMENTS:** By this reference, Tenant's rental application and the following additional documents are incorporated herein by reference and made a part hereof as if set forth in full herein:

State of Washington Mobile Home Landlord-Tenant Act, Ch. 59.20
Park Rules and Regulations

_____

_____

Tenant acknowledges that a copy of each such document has been attached to this Lease Agreement and provided to Tenant.

25. **ENTIRE AGREEMENT:** Tenant agrees that this Lease Agreement contains the entire agreement between the parties relating to the rental of space within Landlord's manufactured home park. All prior negotiations or stipulations concerning this matter which preceded or accompanied the execution hereof, are conclusively deemed to have been superseded hereby. No servant, agent, or employee of Landlord has any authority to make any representations or enter into any agreements in any way inconsistent or in conflict with this Lease Agreement. This Lease Agreement may be altered, however, by written agreement of the parties or by operation of law.

26. **CAPTIONS:** The captions and paragraph headings in this Lease Agreement are for convenience only, are not to be considered a substantive part of the Lease Agreement, and are not intended in any way to limit or amplify any provision of this Lease Agreement.

LANDLORD:

By: _____
Authorized Signature

TENANT:
Joyce E Bailey

_____

CP-1094

5/93

# LITTLE MOUNTAIN ESTATES

## ATTACHMENT A

## RENT ADJUSTMENT FORMULA

The Consumer Price Index All Urban Consumers - Seattle - Tacoma (1982-84 Base = 100) for the month nearest the first month of the lease is the base for computing the annual rent adjustment. If the index published nearest the annual adjustment date has changed over the BASE Index the new monthly rent shall be set by multiplying the first months rent by a fraction the numerator of which is the new Consumer Price index divided by the BASE and the denominator is the BASE Index. This formula will be repeated for the second and subsequent adjustments to the rent level.

If the index is changed, revised or discontinued, a new formula will be devised using data from the United States Bureau of Labor Statistics or another appropriate government agency.

Additional adjustments may be made for:

- real estate taxes *
- water service *
- television cable *
- maintenance of common areas
- cost of operating the community building
- improvements made to the park

* (Note: Consistent with RCW 59.20.060(2)(c), these adjustments may be either positive or negative.)

Increases in these costs may be passed on at the annual rental adjustment date. If the landlord chooses to pass on the cost increases, the tenant will be presented with this information 3 months in advance, consistent with RCW 59.20.090(2). The costs will then be equally divided between the Little Mountain Estates Tenants, prorated to each lot at 1/120.

All rent figures will be rounded to the nearest dollar.

## ATTACHMENT "B"

This lease shall be assignable by tenant only to a person to whom Tenant sells or transfers title to the manufactured home on said lot subject to the following:

a). All outstanding taxes, rents and/or fees owed by the tenant must be paid prior to such transfer.

b). Subject to the approval of Landlord after fifteen (15) days written notice by Tenant of such intended assignment. Landlord shall approve or disapprove of the assignment of this lease on the same basis that Landlord approves or disapproves of any new tenant or manufactured home.

c). Upon assignment by Tenant of Tenant's leasehold interest in the homesite, this rental agreement shall automatically convert to a one (1) year lease beginning on the effective date of the assignment. The new monthly rent shall be the rent charged by landlord following the most recent rent increase for the park preceeding the effective date of the assignment.

d). Assignment as defined in this paragraph shall apply to all voluntary transfers and involuntary transfers of Tenant, including a transfer between married tenants pursuant to a divorce decree, separation agreement, or similar document or order, or a transfer in a bankruptcy or other insolvency proceeding.

e). Landlord shall assign its interest in this agreement to any third party who purchases the park.

## ATTACHMENT "C"

Name and address of all parties with a secured interest in the home:

DECLARATION OF SERVICE

On said day below I deposited in the U. S. mail a true and accurate copy of the following document: Brief of Respondents, Cause No. 57810-3-I, to the following:

Walter H. Olsen, Jr.
B. Tony Branson
Olsen Law Firm PLLC
604 W. Meeker Street, Suite 101
Kent, WA 98032

Thomas P. Sughrua
Sughrua & Associates
1411 4th Avenue, Suite 1420
Seattle, WA 98101

Philip J. Buri
1601 F Street
Bellingham, WA 98225

Original sent for filing with:
Court of Appeals, Division I
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: August 13, 2007, at Tukwila, Washington.

Christine Jones

Christine Jones
Legal Assistant
Talmadge Law Group PLLC